

RESPONSE TO ELECTION/RESTRICTION
U.S. APPLN. NO. 09/845,359

PATENT APPLICATION

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Re: Application of Foster et al.

Filing Date: May 1, 2001

Serial Number: **09/845,359**

Group Art Unit: 1764

For: Systems and Methods for Solar
Distillation

Examiner: Virginia Manoharan

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RESPONSE TO ELECTION OF SPECIES REQUIREMENT

Commissioner of Patents
Washington, D.C. 20231

In response to the Office Action dated July 21, 2003, Applicants submit the following:

REMARKS

Applicants hereby make a provisional election of Group 4 which includes claims 1-9, 15, and 23-27, with traverse. Applicants respectfully submit that the Examiner has improperly segregated the claims into four groups or species. Applicants respectfully request that the Examiner reconsider the election requirement and examine all the presently pending claims together because they are variations of a solar powered distillation system, as recited in the preamble of the claims.

First, the preamble to solar powered distillation system breathes life and meaning into the claims. In claims directed to articles and apparatus, any phraseology in the preamble that limits the structure of that article or apparatus must be given weight. In Re Stencel, 828 F.2d 751, 4 USPQ2d 1071 (Fed. Cir. 1987). The language of the preamble should be given patentable weight if the preamble serves to further define the structure of the article produced. Kropa v. Robie, 187 F.2d 67, 190 USPQ 15 (CCPA 1976). See also MPEP section 2111.02. The preamble of presently pending claims 1-21 and 23-27

should be given patentable weight because the claims are directed to an apparatus and the term solar powered distillation system helps to further define the structure of the claimed invention and direct it to the structure of a solar distillation system.

Further, the present claims 1-21 and 23-27 when read in light of the specification would clearly be understood by one skilled in the art to be directed to a solar powered distillation system. The Examiner's approach of reading the words of the preamble out of the claims makes the presently pending claims much more broad than is reasonable given the Applicants' drafting of the claims and intent. If the Applicants intended that the claims be directed to any apparatus having only the elements recited after the preamble, the Applicants' would have stated an apparatus rather than a solar powered distillation system in the preamble.


Finally, Applicants respectfully submit that there is no undue burden on the Examiner to search all the presently pending claims together. Applicant notes that the Examiner did not make such an election requirement prior to the earlier substantive search and examination in the present application, nor prior to performing a search in the related PCT patent application. Applicants also note that the additional claims 23-27 added after the last office action are included in the same group as claims 1-9 and 15, group 4, and do not result in any further burden on the Examiner.

Based on the aforementioned, Applicants submit that the Examiner's election of species requirement should be withdrawn and pending claims 1-21 and 23-27 all be examined together.

Favorable action on the pending claims is respectfully requested.

If for any reason the Examiner would like to discuss the election of species
further, the Examiner is invited to contact the undersigned at the telephone number listed
below.

Respectfully submitted,



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